

This appeal is taken from the Final Action mailed March 4, 2008.

Real Party in Interest

The real party in interest in the above-identified application is:

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Related Appeals and Interferences

There are no related appeals or interferences of which Applicant is aware regarding the above-identified application.

Status of Claims

Claims 3, 9 and 22 have been canceled. Claims 11-21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 18 and 19 have been corrected and are presently only objected to. Claims 1, 2, 4-8 and 10 are subject to the present appeal. Claims 1 and 2 (on appeal) and claims 17 and 18 (not on appeal) have been amended subsequent to the final rejection. Claims 1, 2, 4, 5 and 8 stand rejected under 35 U.S.C. 103(a) over US Patent No. 2,768,025 to Spear et al. Claims 6 and 7 stand rejected under 35 U.S.C. 103(a) over Spear et al. in view of US Patent No. 5,636,894 to Kinnanen. Claim 10 stands rejected under 35 U.S.C. 103(a) over Spear et al. in view of US Patent No. 6,866,324 to Neubrand et al.

Status of Amendments After Final Rejection

An amendment after final was filed and entered by the Examiner.

Summary of the Claimed Subject Matter

The claimed invention will now be summarized with reference to the drawings being made by way of reference numerals.

Independent Claim 1

The claimed invention recites a convertible (1) with a roof (2) that is movably supported relative to an automobile body (see page 8, lines 3-4). The roof (2) can be moved in a translatable direction at least nearly horizontally between a closed position, in which a front roof section (5) is supported on and is in a mounting connection with a windshield frame (7) (see page 8, lines 18-20, page 9, lines 19-22), and an intermediate position, in which the mounting connection between the roof (2) and the windshield frame (7) is released and in which the front roof section can be swiveled upward in a roof movement that includes at least a rotational component (see page 13, lines 2-5). The translatable displacement (H) of the roof and the roof movement that at least includes a rotational component (8) occur in succession (see page 11, lines 17-19). The roof (2) is rotatably supported on lateral

mainbearings (8) relative to an automobile body (20) (see page 11, lines 4-7). The mainbearings (8) are movable at least nearly horizontally relative to the automobile body (20) (see page 10, lines 18-20, page 17, lines 1-5). The distance (H) of the at least nearly horizontal movement is between two and eight centimeters (see page 11, lines 14-16).

Grounds of Rejection to be Reviewed on Appeal

The following grounds are presented for review:

Whether claims 1, 2, 4, 5 and 8 are unpatentable under 35 U.S.C. 103(a) over Spear et al.

Whether claims 6 and 7 are unpatentable under 35 U.S.C. 103(a) over Spear et al. in view of Kinnanen.

Whether claim 10 is unpatentable under 35 U.S.C. 103(a) over Spear et al. in view of Neubrand et al.

ArgumentThe Rejection of Claims 1, 2, 4, 5 and 8under 35 U.S.C. 103(a):

In rejecting claims 1, 2, 4, 5 and 8, the Examiner stated the following in the "New Grounds of Rejection Due to Amendment After Final":

"SPEAR, JR. et al. discloses a convertible roof, however fails to specifically state the horizontal movement distance being between two and eight centimeters. It is, however, an obvious expedient to choose whatever distance is needed to disengage the front roof part from the window frame in order to pivot the roof to the open position."

In accordance with the reference to Spear et al., the front roof part is in its totality moveably supported on a lateral guide track. The roof is not rotated about a transverse axis; rather the roof is moved down in its original orientation. In other words, when the roof is opened, the roof is moved only in a continuous downward and rearward movement without being pivoted.

In accordance with the invention, it is important that the front roof part is moved initially exclusively horizontally in

order to achieve the release of the locking means from the windshield frame. This horizontal movement takes place for about 2 to 8 centimeters. The roof part is then moved rearwardly from this released position. Consequently, first a translatory movement and then a pivoting movement take place without a combination of these movements.

It is important in this connection that the reference does not have any main posts for pivoting the roof part and that, consequently, the initial rearward movement and the subsequent upward movement are not possible. Rather, in the reference, the entire movement is a translatory movement on a curved track.

Applicant respectfully submits that the claims in the application are not obvious over Spear et al. In fact, Applicant believes that the Examiner has not accurately evaluated the reference to Spear et al.

The Examiner states that it is "an obvious expedient to choose whatever distance is needed to disengage the from roof part from the window frame in order to pivot the roof to the open position." However, this overlooks that in the reference the roof is not supported by main bearings and is not pivotable about the

main bearings. Rather, the reference merely provides trolleys 47 with rollers 48. It is not possible at any time to pivot the roof about these trolleys. There is not even a pivoting axis around which the roof could be pivoted. Additionally, there is no horizontal displacement (irrespective of distance) and a subsequent pivoting. Instead, Spear et al. only have a downward sliding in a guide link. Thus, the operations of 1) disengaging the roof from the windshield frame and 2) opening the roof cannot be separated from each other. The invention, on the other hand can do these operations separately, first the main bearings are moved horizontally to disengage the roof from the windshield frame, and then the roof can be pivoted about the main bearings to open the roof. This is not taught by or obvious from Spears et al.

Thus, it is submitted that the rejection of claims 1, 2, 4, 5 and 8 under 35 U.S.C. 103(a) over the above-discussed reference is in error.

The Rejection of Claims 6 and 7 under 35 U.S.C. 103(a):

Claims 6 and 7 stand and fall with independent claim 1.

The Rejection of Claim 10 under 35 U.S.C. 103(a):

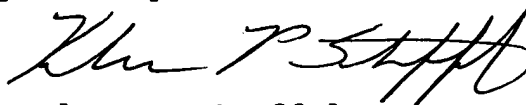
Claim 10 stands and falls with independent claim 1.

Conclusion

Accordingly, in view of the above considerations, it is Applicant's position that the Examiner's rejections of claims 1, 2, 4, 5, 6, 7, 8 and 10 under 35 U.S.C. 103(a) are in error and should be reversed.

The amount of \$540.00 to cover the fee for filing an appeal brief has been previously paid. Any additional fees or charges required at this time in connection with this application should be charged to Patent and Trademark Office Deposit Account No. 11-1835.

Respectfully submitted,

By 

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BU-10

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, PO Box 1450 Alexandria, VA 22313-1450, on July 17, 2009.

By: 
Klaus P. Stoffel

Date: July 17, 2009

Claims Appendix

1. Convertible (1) with a roof (2) that is movably supported relative to an automobile body, wherein the roof (2) can be moved in a translatory direction at least nearly horizontally between a closed position, in which a front roof section is supported on and is in a mounting connection with a windshield frame (7), and an intermediate position, in which the mounting connection between the roof (2) and the windshield frame (7) is released and in which the front roof section can be swiveled upward in a roof movement that includes at least a rotational component, wherein the translatory displacement (H) of the roof and the roof movement that includes at least a rotational component (S) occur in succession, the roof (2) being rotatably supported on lateral main bearings (8) relative to an automobile body (20), wherein the main bearings (8) are movable at least nearly horizontally relative to the automobile body (20), and wherein the distance (H) of the at least nearly horizontal movement is between two and eight centimeters.

2. Convertible (1) in accordance with Claim 1, wherein, in a rearwardly displaced position of the roof (2), the front roof section can be swiveled upward about the main bearings (8).

4. Convertible in accordance with Claim 1, wherein the front roof section is mounted on the windshield frame (7) without locks, and at least one locking device is assigned to the displaceable main bearings (8).

5. Convertible in accordance with Claim 1, wherein a positive-locking connection can be made between the front roof section and the windshield frame (7).

6. Convertible in accordance with Claim 5, wherein, for the positive-locking connection, pins (10), which are located essentially in an extension direction of the front roof part (5), are assigned to the front roof section and are configured to fit into complementary recesses (11) of the windshield frame (7).

7. Convertible in accordance with Claim 6, wherein the pins (10) have a conical shape.

8. Convertible in accordance with Claim 1, wherein to open the roof (2), the distance (H) of the at least nearly horizontal displacement in the opposite direction from the direction of travel (F) is limited to a roof position in which the front roof

section can swivel freely upward without danger of collision with the windshield frame (7).

10. Convertible in accordance with Claim 1, wherein the roof (2) comprises several rigid roof parts (3, 5), wherein a rear roof part (3) extends at least between a belt line (L) and a front roof part (5) that is located in front of the rear roof part in the direction of travel (F) and above a passenger compartment, and wherein the rear roof part (3) has a middle section (S5), which, in the closed state of the roof, lies between lateral main posts (S4) and encloses a rear window.

BU-10

Evidence Appendix

N.A.

BU-10

Related Proceedings Appendix

There are no related proceedings.